

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 16<sup>th</sup> Floor  
Sacramento, CA 95814**

**INITIAL STATEMENT OF REASONS**

**Date: January 9, 2009**

**REG-2008-00036**

**INSURER RECOMMENDATIONS OF AUTOMOTIVE REPAIR DEALERS**

**INTRODUCTION**

SB 551 (Chapter 791, Speier, 2003) added California Insurance Code Section 758.5 to prohibit an insurer from requiring a claimant use a specific automotive repair dealer. Section 758.5 also prohibits an insurer from suggesting or recommending an automobile be repaired at a specified automotive dealer, unless the claimant requested the referral, or the claimant is informed in writing of his or her rights. The understanding and application of section 758.5 by insurance companies and automobile repair shops is not consistent, resulting in some claimants becoming confused about, uncertain of, and deprived of their rights.

The Commissioner believes that the proposed regulation is necessary to implement, interpret, and make specific Section 758.5.

The Commissioner proposes to adopt California Code of Regulations, Title 10, Chapter 5 Subchapter 9, Article 7.5, Section 2698.93 pursuant to the authority set forth in Section 758.5

**SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION**

The specific purpose of each adoption and the rationale for the Commissioner's determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed are set forth below.

Insurance companies and automotive repair dealers clash over what information insurers can tell claimants, and when the information can be told. The specific purpose of this regulation is to clarify the type of information which can be disclosed by an insurance company to a claimant, and when the information may be disclosed. By clarifying when an insurance company may provide a claimant a referral, and by clarifying what communication constitutes a referral, this regulation will reduce the conflict between insurance companies and automotive repair dealers in interpreting Section 758.5. This improved clarity and understanding will enable insurance companies to both benefit consumers by giving them a better understanding of their rights and implement Section 758.5 according to the intent of its authors.

Section 2698.93(a) establishes the scope of the regulation. It limits the regulation to claims under private passenger automobile insurance policies, and specifies that the regulations apply to claims under both first-party collision or uninsured motorist coverage claims and to third-party claims under an automobile liability insurance policy. This section is necessary to satisfy the

clarity standard of the Administrative Procedure Act (APA) by defining precisely which claims are and which are not subject to this rule.

Section 2698.93(b) establishes the fundamental rule of the regulation, which is that an insurer shall not suggest or recommend an auto repair dealer after the claimant has chosen a dealer.

While this rule essentially repeats the statutory rule established in section 758.5(c) of the Insurance Code, it is necessary to include this rule explicitly so that the limitations and clarifications of the rule found in the rest of proposed regulation are understandable without separate reference to the statute.

Section 2698.93(c) supplements and clarifies the fundamental rule of the regulation, section 2698.93(b), by defining when the claimant has chosen a particular automotive repair dealer. This section is necessary to satisfy the clarity standard of the APA by defining the specific point in time beyond which an insurer is prohibited from suggesting or recommending an auto repair dealer, thereby violating the fundamental rule.

Section 2698.93(d) supplements and clarifies the fundamental rule, section 2698.93(b), by defining what acts constitute suggesting or recommending an automotive repair dealer. This section is necessary to satisfy the clarity standard of the APA by defining and providing examples of the acts which the regulations seek to prohibit.

Section 2698.93(e) supplements and clarifies the scope of the regulation. It establishes the insurers' ability to explain contractual provisions of the insurance policy to the claimant. This section is necessary to satisfy the clarity standard of the APA by clarifying that insurers can continue to provide claimants with information regarding other portions of the policy, including those provisions that may touch upon the repair of the damaged vehicle.

## **IDENTIFICATION OF STUDIES**

There are no specific studies relied upon in the adoption of this article. In adopting the proposed regulation the Department has relied upon the comments provided by consumers, the insurance industry, and the automotive repair dealer industry during the Department's rulemaking attempt in 2007 and during the informal monthly meetings from November, 2007 to October, 2008, with representatives of the insurance and repair dealer industries.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

Adoption of these regulations would not mandate the use of specific technologies or equipment.

## **ALTERNATIVES**

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. Performance standards were considered as an alternative, they were rejected as ineffective in addressing these issues.

## **ECONOMIC IMPACT ON SMALL BUSINESS**

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected, in part, because the kind of risks from which the regulations seek to protect consumers cannot practicably be gauged by means of a performance standard.

## **PRENOTICE DISCUSSIONS**

The Commissioner has not conducted a prenotice public discussion (workshop) pursuant to Government Code Section 11346.45. The Department has held informal monthly meetings with representatives of both the insurance and automobile repair shop industries from November, 2007, to October, 2008. No additional, pre-hearing, public participation is planned. The proposed regulations involve neither complex proposals nor a large number of proposals that cannot easily be reviewed during the comment period.